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09/992,392	11/06/2001	David K. Locke	47079-0119	7604
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NIXON PEABODY LLP 161 N CLARK ST. 48TH FLOOR CHICAGO, IL 60601-3213			HOEL, MATTHEW D	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/992,392	LOCKE ET AL.	
	Examiner Matthew D. Hoel	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 2 May 2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3-15,17-29,31,33 and 38-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,3-15,17-29,31,33 and 38-40 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1, 4, 5, 7, 9 to 12, 14, 18 to 20, 22, 24 to 28, 31, and 38 to 40 are rejected under 35 U.S.C. 103(a) as being obvious over Yoseloff, et al. (U.S. patent 6,464,581 B1) in view of Rudell, et al. (U.S. patent 6,200,219 B1).

4. As to Claim 1: '581 discloses all of the limitations of Claim 1, but lacks specificity as to a second discrete symbol being moved relative to the continuous graphical element and an award being determined based on the degree of movement relative of a payline. '581 teaches a slot machine comprising a plurality of reels, each of the reels comprising a reel strip bearing a plurality of discrete symbols and a continuous graphical element extending between adjacent ones of the discrete symbols such that

the discrete symbols are thematically unified by the graphical element (Abst.; simulated movie reel, Fig. 3; looping reels, Fig. 8; Col. 2, Lines 30 to 56). '581 teaches a processor operable to rotate the reels and stop the reels to place the discrete symbols in visual association with a display area (Col. 9, Lines 44 to 48; Col. 9, Lines 9 to 18; 1 to 5 frames exposed for active play, Abst.). '581 awards a payout responsive to an alignment of a plurality of discrete symbols associated with a winning combination along a selected payline (Col. 4, Line 65 to Col. 5, Line 9). '219, however, teaches a video reel, wherein the processor is operable to, for at least one of the reels, move a second selected discrete symbol relative to the continuous graphical symbol and determine an award being related to a degree of the movement and being independent of any payline (Abst., Figs. 1-3; vehicle moves relative to graphical image, 2: 65-3:7; award indicated by speed, number of laps, and elapsed time, Fig. 8, 4:27 to 35). The processor of '219 is moving the symbol or car relative to the continuous graphical element or road based on input from the player (2:28-38). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the second discrete symbol of '219 to the game of '581. One of the embodiments of '581 is cars on a track (Fig. 5, 7:63-67), which is analogous to the car going over a continuous graphical element in the form of a racetrack. Though the payout of '581 is not based on the amount of distance traveled, it is analogous in that the payout is determined by the location of where the cars stop (7:63-67). Additionally, the nudging of '581 for the player to obtain a more advantageous outcome (6:51-7:7) is analogous to the player control of the symbols (car) of '219 as they are both using player input to control the

motion of a symbol relative to a continuous graphical element to obtain a the most favorable outcome. Additional motivation for this modification can be found in the prior art in U.S. patent 6,227,967 which teaches a game in which a car moves relative to a continuous element and points are awarded based on how far the car goes (Abst., Figs. 1-2). The advantage of this combination would be to provide greater interactivity for the player as the racing mode of '219 allows the player to control the racing of the car (symbol) over a track (continuous graphical element), making '581 even more advantageous for one of its intended purposes of some control over the outcome pertaining to the player (stopping movie reel at a selected point, 6:18-50; nudging symbol relative to element, 6:51-7:7).

5. As to Claim 9: '581 teaches a slot machine comprising a plurality of reels, each of the reels comprising a reel strip bearing a plurality of discrete symbols positions and a continuous graphical element extending between adjacent ones of the discrete symbol positions such that the discrete symbols positions are thematically unified by the graphical element, each of the reels strips also bearing a discrete symbol in at least one of the discrete symbol positions (Abst.; simulated movie reel, Fig. 3; looping reels, Fig. 8; Col. 2, Lines 30 to 56). '581 has a processor programmed to award a payout responsive to an alignment of a plurality of discrete symbols associated with a winning combination along a selected payline (Col. 9, Lines 44 to 48; Col. 9, Lines 9 to 18; 1 to 5 frames exposed for active play, Abst.; Col. 4, Line 65 to Col. 5, Line 9). '581 teaches a plurality of different first discrete symbols being associated with respective discrete

symbol positions (Fig. 5, 7:63-67). The new limitations of Claim 9 are obvious for the reasons outlined in the rejections of Claims 1 and 3.

6. As to Claim 18: '581 teaches a method of conducting a slot game on a slot machine controlled by a processor (Abst., Col. 9, Lines 44 to 48). '581 receives a wager from a player (Col. 1, Lines 12 to 20). '581 rotates a plurality of reels, each of the reels each comprising a reel strip bearing a plurality of discrete symbols and a continuous graphical element extending between adjacent ones of the discrete symbols such that the discrete symbols are thematically unified by the graphical element (Abst.; simulated movie reel (video reel), Fig. 3; looping reels, Fig. 8; Col. 2, Lines 30 to 56). '581 stops the reels to place a portion of each reel in visual association with a display area (Col. 9, Lines 44 to 48; Col. 9, Lines 9 to 18; 1 to 5 frames exposed for active play, Abst.). '581 provides a payout responsive to an alignment of a winning combination of discrete symbols along a payline in the display area (Col. 4, Line 65 to Col. 5, Line 9). The new limitations of Claim 18 are obvious for the reasons outlined in the rejections of Claims 1 and 3.

7. As to Claim 25: '581 teaches a method of conducting a slot game on a slot machine controlled by a processor (Abst., Col. 9, Lines 44 to 48). '581 receives a wager from a player (Col. 1, Lines 12 to 20). '581 rotates a video reel, the video reel bearing a plurality of discrete symbol positions and a continuous graphical element extending between adjacent ones of the discrete symbol positions such that the discrete symbol positions are unified by the graphical element (Abst.; simulated movie reel, Fig. 3; looping reels, Fig. 8; Col. 2, Lines 30 to 56). '581 moves a discrete symbol between

adjacent ones of the discrete symbol positions as the video reel is rotated (player adjusting distance between frame positions, Fig. 8, Col. 8, Lines 17 to 36, appears to change positions of symbols relative to frame positions without changing order of symbols on virtual reel). '581 determines a payout based on the movement of the discrete symbol between the adjacent ones of the discrete symbol positions as the video reel is rotated (Col. 4, Line 65 to Col. 5, Line 9). The new limitations of Claim 25 are obvious for the reasons outlined in the rejections of Claims 1 and 3.

8. As to Claim 4: The discrete symbols of '581 are superimposed over the graphical element (Fig. 3, Col. 5, Line 66 to Col. 6, Line 17).

9. As to Claim 5: One of the graphical elements of '581 is a trial in the form of a railroad (Fig. 5, Col. 7, Lines 63 to 67).

10. As to Claim 7: '581 teaches the reel being simulated on a video display (Col. 2, Lines 30 to 46).

11. As to Claim 10: '581 teaches means for rotating and stopping the reel and the discrete symbol to place a portion of the reel in visual association with a display area (1 to 5 frames exposed for active play, Abst.).

12. As to Claim 11: '581 teaches the discrete symbol being superimposed over the graphical element (Fig. 3; Col. 5, Line 66 to Col. 6, Line 17).

13. As to Claim 12: One of the graphical elements of '581 is a trial in the form of a railroad (Fig. 5, Col. 7, Lines 63 to 67).

14. As to Claim 14: '581 teaches the reel being simulated on a video display (Col. 2, Lines 30 to 46).

15. As to Claim 19: '581 teaches the discrete symbol being superimposed over the graphical element (Fig. 3; Col. 5, Line 66 to Col. 6, Line 17).

16. As to Claim 20: One of the graphical elements of '581 is a trial in the form of a railroad (Fig. 5, Col. 7, Lines 63 to 67).

17. As to Claim 22: '581 teaches the reel being simulated on a video display (Col. 2, Lines 30 to 46).

18. As to Claim 24: '581 teaches the payout based, at least in part, on the portion of the reel associated with the display area (1 to 5 frames exposed for active play, Abst.; Col. 4, Line 65 to Col. 5, Line 9).

19. As to Claim 26: '581 teaches stopping the reel to place a portion of the video reel in visual association with the display area (1 to 5 frames exposed for active play, Abst.).

20. As to Claim 27: '581 teaches the discrete symbol being superimposed over the graphical element (Fig. 3; Col. 5, Line 66 to Col. 6, Line 17).

21. As to Claim 28: One of the graphical elements of '581 is a trial in the form of a railroad (Fig. 5, Col. 7, Lines 63 to 67).

22. As to Claim 31: '581 teaches the discrete symbol being moved at a first velocity relative to the continuous graphical element (train embodiment with cars moving relative to tracks, Fig. 5, Col. 7, Lines 63 to 67).

23. As to Claims 38 to 40: '581 teaches second discrete symbols that can be different from first discrete symbols (Three Stooges or other themed symbols implemented in a bonus configuration, which would be different from the primary set of symbols, 6:66-17).

24. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over '581 and '219.

25. As to Claims 3 and 16: '581 teaches the discrete symbol being moved at a first velocity relative to the continuous graphical element (train embodiment with cars moving relative to tracks, Fig. 5, Col. 7, Lines 63 to 67). '581 does not, however, mention this happening during a bonus game. The applicant has not stated that having this happen during the course of a bonus game as opposed to only during the course of a base game solves any stated problem or is for any particular purpose. Moreover, it appears that '581, or the applicants' invention would function equally well with the limitation of moving the discrete symbol at a first velocity relative to the continuous graphical element in the course of a bonus game. '581 does teach bonus events in 6:66-7:17 in which the video reel feature is implemented as a bonus feature, so the game of '581, or the claimed invention, could function equally well as a primary or bonus game based on the teachings of '581. Further motivation can be found in the prior art as 6,210,275 teaches a racing game in which symbols move relative to a continuous graphical element in a bonus game (Fig. 1, Abst.). Analogous to '219, '275 awards the player according to the amount of motion relative to the continuous graphical symbol in that the player whose horse (symbol) crosses the finish line first wins the jackpot. Accordingly, it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to modify '581 to include the limitation of moving the discrete symbol at a first velocity relative to the continuous graphical element in the course of a

bonus game, as it is already done in the base game, and such a modification would have been considered a mere design choice which fails to patentably distinguish above '581.

26. Claims 6, 13, 21, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over '581 and '219.

27. As to Claims 6, 13, 21, and 29: '581 teaches the trail being in the form of a railroad as opposed to a road or a board game path. The applicants have not stated that having the trail in the form of a road or a board game path as opposed to a railroad solves any stated problem or is for any particular purpose. Moreover, it appears that '581, or the applicants' invention, would function equally well with the limitation of having the trail in the form of a road or a board game path as opposed to a railroad. Accordingly, it would have been *prima facie* obvious to one of ordinary skill in the art to have modified '581 to have the limitation of having the trail in the form of a road or a board game path as opposed to a railroad, because such a modification would have been considered a mere design consideration which fails to patentably distinguish above '581.

28. Claims 8, 15, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over '581 and '219.

29. As to Claims 8, 15, and 23: '581 does not mention the reel being physical and being driven by a stepper motor. Such a modification would however been obvious to

one of ordinary skill in the art at the time of invention in light of Hagiwara (U.S. patent 4,838,552 A). '552 teaches slot reels made from actual film strips (Figs. 6 and 7, Col. 6, Lines 53 to 67). Fig. 6 of '552 teaches a light source 58, very similar to the mechanism found in an actual film projector. '581 teaches the slot reel being a virtual movie reel (Abst.; Fig. 3; Col. 5, Line 66 to Col. 6, Line 17). Such a modification using a physical reel to simulate a movie reel would be obvious since actual movies in the film format are played on film projectors. Motivation for using a stepper motor to drive the physical reel with a stepper motor can be found in Davies (UK patent publication GB 2 330 936 A, Figs. 1d-f, Page 5, Lines 9 to 14), which displays slot reels using physical reels using strips of actual film driven by stepper motors. Stepper motors to drive slot reels were widely known in the gaming art at the time of invention. The advantage of this motivation would be to provide a realistic movie projector-like physical implementation of the slot reels for the movie film embodiment of '581, such a modification would appeal to game players familiar with the Three Stooges, Marx Brothers, and Godzilla themes of '581 (5:66 to 6:17), most of whom will be old enough to have actually seen a film projector in real life, unlike younger players who may have only seen a VCR or a DVD player. Further motivation can be found in Nevada gaming regulation 14.025 requiring themes to appeal to players only 21 years of age or older.

30. Claims 17 and 33 rejected under 35 U.S.C. 103(a) as being unpatentable over '581 and '219 in view of Kojima (U.S. patent 5,265,889 A).

31. As to Claims 17 and 33: The previous rejections of Claims 8 and 15 are incorporated by reference, as they show the limitation of a physical reel comprising a strip are obvious in light of '581 and '219. '581 discloses all of the limitations of Claims 17 and 33, but lacks specificity as to a payout accumulating based on each discrete symbol position traveled by the discrete symbol. '889, however, discloses the score accumulating based on the distance of a discrete symbol traveled in relation to a continuous graphical element (Col. 2, Lines 53 to 58). The discrete symbol takes the form of a car (6) and the graphical element takes the form of a road (7) (Fig. 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the distance-based score accumulation of '889 to the game of '581. '581 has a video reel strip embodiment (simulated movie film strip, Fig. 3) and an obvious physical reel strip modification as demonstrated in the rejections of Claims 8 and 15. '581 also has an embodiment in which a vehicular discrete symbol, a train, moves relative to a continuous graphical element in the form of a railroad track (Fig. 5; Col. 7, Lines 63 to 67, cars aligning with winning paylines). '581 also teaches a game of pseudo-skill in which the discrete symbol in the form of a vehicle traveling along a path, and the player is allowed to attempt to stop the vehicle at a desired point on the path (Col. 11, Lines 12 to 20). The advantage of this combination would be to provide a further way for a player to accumulate points, as opposed to merely winning points for winning paylines. This would be a very concrete way for the player to accumulate points, as it is very visible to the player the relative motion of the simulated locomotive or other vehicle throughout the game.

Response to Arguments

32. Applicant's arguments with respect to Claims 1, 3-15, 17-29, 31, 33 and 38-40 have been considered but are moot in view of the new ground(s) of rejection.

Citation of Pertinent Prior Art

33. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. patents 5,411,270 (16:60-17:33); 5,963,218; 5,405,151; and 5,411,272 teach scrolling playfields (Figs. 25-27). U.S. patent 4,445,114 teaches scrolling a video game display. U.S. patent 5,265,889 teaches a mechanical game with thematic unity. U.S. patent 4,148,485 teaches a moving car on a video game playfield. EPO 0 014 045 A1 teaches scrolling a video game display.

Conclusion

34. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

35. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

36. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Hoel whose telephone number is (571) 272-5961. The examiner can normally be reached on Mon. to Fri., 8:00 A.M. to 4:30 P.M.

37. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

38. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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